
A BILL FOR AN ACT

RELATING TO COLLECTIVE BARGAINING RIGHTS OF INDEPENDENT DIRECT
SUPPORT PROVIDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **INDEPENDENT DIRECT SUPPORT PROVIDERS**

6 § -1 **Definitions.** As used in this chapter:

7 "Board" means the Hawaii labor relations board established
8 under section 89-5.

9 "Collective bargaining" or "bargaining collectively" means
10 the process by which the State and the exclusive representative
11 of the independent direct support providers negotiate mandatory
12 subjects of bargaining identified in section -4(b), or any
13 other mutually agreed subjects of bargaining not in conflict
14 with state or federal law, with the intent to arrive at an
15 agreement that, when reached, shall be legally binding on all
16 parties.



1 "Collective bargaining service fee" means a fee deducted by
2 the State from the compensation of an independent direct support
3 provider who is not a member of the exclusive representative of
4 independent direct support providers, which is paid to the
5 exclusive representative.

6 "Exclusive representative" means the labor organization
7 that has been certified under this chapter and has the right to
8 represent independent direct support providers for the purpose
9 of collective bargaining.

10 "Grievance" means the exclusive representative's formal
11 written complaint regarding the improper application of one or
12 more terms of the collective bargaining agreement, the failure
13 to abide by any agreement reached, or the discriminatory
14 application of a rule that has not been resolved to a
15 satisfactory result through informal discussion with the State.

16 "Independent direct support provider" means any individual
17 who provides home- and community-based services to a service
18 recipient and is employed by the service recipient, shared
19 living provider, or surrogate.

20 "Labor organization" means an organization of any kind in
21 which independent direct support providers participate and that



1 exists, in whole or in part, for the purpose of representing
2 independent direct support providers.

3 "Service recipient" means a person who receives home- and
4 community-based services administered by the department of human
5 services.

6 "Shared living provider" means a person who operates under
7 a contract with an authorized agency and provides individualized
8 home support for one or two people who live in the person's
9 home. An authorized agency includes a designated agency for
10 developmental services.

11 "Surrogate" means a service recipient's authorized family
12 member, legal guardian, or a person identified in a written
13 agreement as having responsibility for the care of a service
14 recipient.

15 **§ -2 Rights of independent direct support providers.**

16 Independent direct support providers shall have the right to:

- 17 (1) Organize, form, join, or assist a labor organization
18 for the purposes of collective bargaining without
19 interference, restraint, or coercion;
20 (2) Bargain collectively through their chosen
21 representatives;



(3) Engage in concerted activities for the purpose of supporting or engaging in collective bargaining or other mutual aid or protection;

(4) Pursue grievances through the exclusive representative as provided in this chapter; and

(5) Refrain from any or all activities, subject to the requirements of section -4(b)(3).

§ -3 Rights of the State. Subject to the rights guaranteed by this chapter and subject to all other applicable laws and rules, nothing in this chapter shall be construed to interfere with the right of the State to:

(1) Carry out the mandate and goals of the department of human services and to use personnel, methods, and means in the most appropriate manner possible;

(2) With the approval of the governor, take whatever action as may be necessary to carry out the mission of the department of human services in an emergency situation;

(3) Comply with federal and state laws;

(4) Enforce rules and regulatory processes;

(5) Develop rules and regulatory processes that do not impair existing contracts, subject to the duty to



1 bargain over mandatory subjects of bargaining and to
2 the legislative power of the legislature; and

3 (6) Solicit and accept for use any grant of money,
4 services, or property from the federal government, the
5 State, or any political subdivision or agency of the
6 State, including federal matching funds, and to
7 cooperate with the federal government or any political
8 subdivision or agency of the State in making an
9 application for any grant.

10 § -4 Establishment of limited collective bargaining;
11 scope of bargaining; collective bargaining service fee. (a)
12 Independent direct support providers, through their exclusive
13 representative, shall have the right to bargain collectively
14 with the State, through the governor's designee, under this
15 chapter.

16 (b) Mandatory subjects of bargaining under this section
17 shall be limited to:

18 (1) Compensation rates, workforce benefits, and payment
19 methods and procedures, except that independent direct
20 support providers shall not be eligible to participate
21 in the employees' retirement system or the employer-



1 union health benefits trust fund solely by virtue of
2 bargaining under this chapter;

3 (2) Professional development and training, except that the
4 issue of whether the State may choose directly to
5 create and administer a professional development or
6 training program shall be a permissive subject of
7 bargaining;

8 (3) The collection and disbursement of dues or fees to the
9 exclusive representative; provided that a collective
10 bargaining service fee may not be required of
11 nonmembers unless the exclusive representative has
12 established and maintained a procedure to provide
13 nonmembers with:

14 (A) An audited financial statement that identifies
15 the major categories of expenses, and divides
16 them into chargeable and nonchargeable expenses;
17 and

18 (B) An opportunity to object to the amount of the
19 collective bargaining service fee sought, any
20 amount reasonably in dispute to be placed in
21 escrow, subject to prompt review and
22 determination by the board to resolve any



1 objection over the amount of the collective
2 bargaining service fee, as provided for in
3 subsection (d);

4 (4) Procedures for resolving grievances against the State;
5 provided that the final step of any negotiated
6 grievance procedure, if required, shall be a hearing
7 and final determination by the board in accordance
8 with board rules; and

9 (5) Access to job referral opportunities within covered
10 programs, except that the issue of whether the State
11 may choose directly to create and administer a
12 referral registry shall be a permissive subject of
13 bargaining.

14 (c) For the purpose of this chapter, the obligation to
15 bargain collectively is the performance of the mutual obligation
16 of the State and the exclusive representative of the independent
17 direct support providers to meet at reasonable times and confer
18 in good faith with respect to all matters bargainable under this
19 chapter; provided that the failure or refusal of either party to
20 agree to a proposal, or to change or withdraw a lawful proposal,
21 or to make a concession shall not constitute, or be evidence of,
22 directly or indirectly, a breach of this obligation. Nothing in



1 this chapter shall be construed to require either party during
2 collective bargaining to accede to any proposal or proposals of
3 the other party.

4 (d) The collective bargaining service fee shall not exceed
5 eighty-five per cent of the amount payable as dues by members of
6 the exclusive representative. The collective bargaining service
7 fee shall be deducted in the same manner as dues deducted from
8 the compensation of independent direct support providers who are
9 members of the exclusive representative and shall be used to
10 defray the costs incurred by the labor organization in
11 fulfilling its duty to represent independent direct support
12 providers in their relations with the State. Any dispute raised
13 by a nonmember concerning the amount of a collective bargaining
14 service fee, as provided under subsection (b)(3), may be
15 resolved by the board, which shall review and determine the
16 matter promptly, in accordance with the board rules.

17 **§ -5 Election; bargaining unit.** (a) Petitions and
18 elections shall be conducted in like manner pursuant to the
19 procedures provided in section 89-7 for employee organizations,
20 and the exclusive representative shall be the exclusive
21 representative for the purpose of collective bargaining.



1 (b) A representation election for independent direct
2 support providers conducted by the board shall be by mail
3 ballot.

4 (c) The bargaining unit for purposes of collective
5 bargaining pursuant to this chapter shall be one statewide unit
6 of independent direct support providers. Eligible independent
7 direct support providers shall have the right to participate in
8 a representation election but shall not have the right to vote
9 on or otherwise determine the collective bargaining unit.
10 Eligible independent direct support providers shall all be
11 independent direct support providers who have been paid for
12 providing home- and community-based services within the previous
13 one hundred eighty days.

14 (d) At least quarterly, the State shall compile and
15 maintain a list of names and addresses of all independent direct
16 support providers who have been paid for providing home- and
17 community-based services to service recipients within the
18 previous one hundred eighty days. The list shall not include
19 the names of any recipient, or indicate that an independent
20 direct support provider is a relative of a recipient or has the
21 same address as a recipient. Upon request, the State shall
22 provide within seven days the most recent list of independent



1 direct support providers in its possession to any organization
2 that has as one of its primary purposes the collective
3 bargaining representation of independent direct support
4 providers in their relations with state or other public
5 entities, including the labor organization certified as the
6 exclusive representative under this chapter.

7 § -6 Mediation; fact-finding; last best offer. (a) If,
8 after a reasonable period of negotiation, the exclusive
9 representative of the collective bargaining unit and the State
10 reach an impasse, the board, upon petition of either party, may
11 authorize the parties to submit their differences to mediation.
12 Within five days after receipt of the petition, the board shall
13 appoint a mediator who shall communicate with the parties and
14 attempt to mediate an amicable settlement; provided that no
15 person may be appointed as a mediator unless the person is of
16 high standing and not actively connected with labor or
17 management.

18 (b) If, after a reasonable period of time, no fewer than
19 fifteen days after the appointment of a mediator, the impasse is
20 not resolved, the mediator shall certify to the board that the
21 impasse continues.



1 (c) The board shall appoint a fact finder who has been
2 mutually agreed upon by the parties. If the parties fail to
3 agree on a fact finder within five days, the board shall appoint
4 a neutral third party to act as a fact finder pursuant to rules
5 adopted by the board. A member of the board or any individual
6 who has actively participated in mediation proceedings for which
7 fact-finding has been called shall not be eligible to serve as a
8 fact finder under this section, unless agreed upon by the
9 parties.

10 (d) The fact finder shall conduct hearings pursuant to
11 rules of the board. Upon request of either party or the fact
12 finder, the board may issue subpoenas of persons and documents
13 for the hearings, and the fact finder may require that testimony
14 be given under oath and may administer oaths.

15 (e) Nothing in this section shall prohibit the fact finder
16 from endeavoring to mediate the dispute at any time prior to
17 issuing recommendations.

18 (f) The fact finder shall consider the following factors
19 in making a recommendation:

- 20 (1) The needs and welfare of consumers, including their
21 interest in greater access to quality services;



(2) The nature and needs of the personal care assistance program;

(3) The interest and welfare of independent direct support providers;

(4) The history of negotiation between the parties, including those leading to the proceedings;

(5) Changes in the cost of living; and

(6) Generally accepted labor-management relations practices in the State.

(g) Upon completion of the hearings provided in subsection (d), the fact finder shall transmit written findings and recommendations to both parties.

(h) The costs of witnesses and other expenses incurred by either party in fact-finding proceedings shall be paid directly by the parties incurring them, and the costs and expenses of the fact finder shall be divided equally by the parties. The fact finder shall be paid a rate mutually agreed upon by the parties for each day or any part of a day while performing fact-finding duties and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of the fact finder's duties. A statement of fact-finding per diem and expenses shall be certified by the fact finder and submitted to the board for



1 approval. The board shall provide a copy of approved fact-
2 finding costs to each party with its order apportioning half of
3 the total to each party for payment. Each party shall pay its
4 half of the total within fifteen days after receipt of the
5 order. Approval by the board of fact-finding and the fact
6 finder's costs and expenses and its order for payment shall be
7 final as to the parties.

8 (i) If the dispute remains unresolved twenty days after
9 transmittal of findings and recommendations, each party shall
10 submit to the board its last best offer on all disputed issues
11 as a single package. Each party's last best offer shall be
12 certified to the board by the fact finder. The board may hold
13 hearings and consider the recommendations of the fact finder.
14 Within thirty days of the certifications, the board shall select
15 between the last best offers of the parties, considered in their
16 entirety without amendment, and shall determine their cost. The
17 board shall not issue an order under this subsection that:

18 (1) Is in conflict with any statute;

19 (2) Is in conflict with any rule, unless the rule relates
20 to a mandatory subject of bargaining; or

21 (3) Determines an issue that is not a mandatory subject of
22 bargaining.



1 The board shall determine the cost of the agreement
2 selected and recommend to the legislature its choice with a
3 request for an appropriation. If the legislature appropriates
4 the requested amount of funds, the agreement shall become
5 effective and legally binding at the beginning of the next
6 fiscal year. If the legislature appropriates a different amount
7 of funds, the terms of the agreement affected by that
8 appropriation shall be renegotiated based on the amount of funds
9 actually appropriated by the legislature, and the agreement with
10 the negotiated changes shall become effective and binding at the
11 beginning of the next fiscal year. No portion of any agreement
12 shall become effective separately without the mutual consent of
13 the parties.

14 **§ -7 General duties and prohibited conduct; unfair labor**
15 **practices.** (a) The State, the independent direct support
16 providers, and their representatives shall make every reasonable
17 effort to make and maintain agreements concerning matters
18 allowed under this chapter and to settle all disputes, whether
19 arising out of the application of, or concerning, those
20 agreements. Upon request of either party, all disputes shall be
21 considered within fifteen days of the request or at such times
22 as may be mutually agreed to and, if possible, settled with all



1 expedition in conference between representatives designated and
2 authorized to confer by the State or the independent direct
3 support providers; provided that neither party shall be
4 compelled to make any agreements or concessions.

5 (b) It shall be an unfair labor practice for the State to:

6 (1) Interfere with, restrain, or coerce independent direct
7 support providers in the exercise of their rights
8 under this chapter or by any law or rule;

9 (2) Dominate or interfere with the formation or
10 administration of any labor organization or contribute
11 financial or other support to the labor organization;

12 (3) Discriminate in regard to referral practices or
13 eligibility for work opportunities within covered
14 programs for an independent direct support provider,
15 or to encourage or discourage membership in any labor
16 organization;

17 (4) Take negative action against an independent direct
18 support provider because the provider has taken
19 actions demonstrating the provider's support for a
20 labor organization, including signing a petition,
21 grievance, or affidavit or giving testimony under this
22 chapter;



1 (5) Refuse to bargain collectively in good faith with the
2 exclusive representative; or

3 (6) Discriminate against an independent direct support
4 provider based on race, color, creed, religion, age,
5 gender, sexual orientation, gender identity, or
6 national origin, or because the provider is a
7 qualified individual with a disability.

8 (c) It shall be an unfair labor practice for a labor
9 organization to:

10 (1) Restrain or coerce independent direct support
11 providers in the exercise of the rights guaranteed
12 them by law or rule; provided that a labor
13 organization may prescribe its own rules with respect
14 to the acquisition or retention of membership;
15 provided further that the rules are not
16 discriminatory;

17 (2) Refuse to bargain collectively in good faith with the
18 State;

19 (3) Cause, or attempt to cause, the State to discriminate
20 against an independent direct support provider in
21 violation of subsection (b); or



(4) Threaten to or cause a provider to strike or curtail the provider's services in recognition of a picket line of any employee or labor organization.

(d) An independent direct support provider shall not strike or curtail the provider's services in recognition of a picket line of any employee or labor organization.

§ -8 Prevention of unfair labor practices. (a) The board may prevent the State or a labor organization from engaging in any unfair labor practice listed in section -7. Whenever a charge is made that the State or a labor organization has engaged in or is engaging in any unfair labor practice, the board may issue and cause to be served upon that party a complaint stating the charges in that respect and containing a notice of hearing before the board at a place and time therein fixed at least seven days after the complaint is served. The board may amend the complaint at any time before it issues an order. No complaint shall be filed based upon any unfair labor practice that occurred more than six months prior to the filing of the complaint with the board and the service of a copy thereof upon the party against whom such complaint is made, unless the person aggrieved thereby was prevented from filing the complaint by reason of service in the United States armed



1 forces, in which event the six-month period shall be computed
2 from the day of the person's discharge.

3 (b) The party complained of shall have the right to file
4 an answer to the original or amended complaint and appear in
5 person or otherwise and present evidence in connection therewith
6 at the time and place fixed in the complaint. In the discretion
7 of the board, any other person may be permitted to intervene and
8 present evidence in the matter. Any proceeding under this
9 section shall, so far as practicable, be conducted in accordance
10 with the Hawaii rules of evidence adopted under chapter 626.
11 The board shall provide for the making of a transcript of the
12 testimony presented at the hearing.

13 (c) The board shall have power to administer oaths and
14 take testimony under oath relative to the matter of inquiry. At
15 any hearing ordered by the board, the board shall have the power
16 to subpoena witnesses and to demand the production of books,
17 papers, records, and documents for examination. Officers who
18 serve subpoenas issued by the board and witnesses attending
19 hearings conducted by the board shall receive fees and
20 compensation at the same rates as officers and witnesses in
21 cases brought in the circuit court, to be paid by the board.



(d) If, upon a preponderance of the evidence, the board finds that any party named in the complaint has engaged in or is engaging in any unfair labor practice, the board shall state its finding of fact in writing and shall issue and cause to be served on that party an order requiring that party to cease and desist from the unfair labor practice, and to take any affirmative action as will carry out the policies of this chapter. If, upon a preponderance of the evidence, the board does not find that the party named in the complaint has engaged in or is engaging in any unfair labor practice, the board shall state its findings of fact in writing and dismiss the complaint.

(e) In determining whether a complaint shall issue alleging a violation of section -7, and in deciding those cases, the same rules of decision shall apply irrespective of whether or not a labor organization affected is affiliated with a labor organization that is national or international in scope.

§ -9 Negotiated agreement; funding termination; renewal; enforcement. (a) If the State and the exclusive representative reach an agreement, the governor shall request from the legislature an appropriation sufficient to fund the agreement in the next operating budget. If the legislature appropriates sufficient funds, the negotiated agreement shall become



1 effective and binding at the beginning of the next fiscal year.
2 If the legislature appropriates a different amount of funds, the
3 terms of the agreement affected by that appropriation shall be
4 renegotiated based on the amount of funds actually appropriated
5 by the legislature and shall become effective and legally
6 binding in the next fiscal year.

7 (b) Collective bargaining agreements shall remain in
8 effect for a maximum term of two years and shall not be subject
9 to cancellation or renegotiation during the term without the
10 mutual consent in writing of both parties; provided that the
11 consent shall be filed with the board. Upon the filing of the
12 consent, an agreement may be supplemented, canceled, or
13 renegotiated.

14 (c) The agreement shall terminate upon the expiration of
15 its specified term. Negotiations for a new agreement to take
16 effect upon the expiration of the preceding agreement shall be
17 commenced at any time within one year next preceding the
18 expiration date upon the request of either party and may be
19 commenced at any time previous thereto with the consent of both
20 parties.

21 (d) If the State and the collective bargaining unit are
22 unable to arrive at an agreement and no existing agreement is in



1 effect, the existing contract shall remain in force until a new
2 contract is ratified by the parties; provided that nothing in
3 this subsection shall prohibit the parties from agreeing to a
4 modification of certain provisions of the existing contract
5 that, as amended, shall remain in effect until a new contract is
6 finalized and funded by the legislature.

7 (e) The board may enforce compliance with all provisions
8 of a collective bargaining agreement upon the complaint of
9 either party. If a complaint is made by either party to an
10 agreement, the board shall proceed in the manner prescribed in
11 section -8 relating to the prevention of unfair labor
12 practices.

13 **§ -10 Rights unaltered.** (a) A collective bargaining
14 agreement shall not infringe upon any rights of service
15 recipients or their surrogates to hire, direct, supervise, or
16 discontinue the employment of any particular independent direct
17 support provider.

18 (b) Nothing in this section shall alter the rights and
19 obligations of private sector employers and employees under the
20 National Labor Relations Act, 29 U.S.C. section 151 et seq.

21 (c) Independent direct support providers shall not be
22 considered public employees for purposes other than collective



1 bargaining, including joint or vicarious liability in tort or
2 the limitation on liability in subsection (e). Independent
3 direct support providers shall not be eligible for participation
4 in the employees' retirement system or the Hawaii employer-union
5 health benefits trust fund solely by virtue of bargaining under
6 this chapter. Nothing in this chapter shall require the State
7 to alter its current practice with respect to independent direct
8 support providers of making payments regarding social security
9 and medicare taxes, federal or state unemployment contributions,
10 or workers' compensation insurance.

11 (d) Nothing in this chapter shall infringe upon the right
12 of the judiciary and the legislature to make programmatic
13 modifications to the delivery of state services through subsidy
14 or other programs.

15 (e) The State and its employees shall not be vicariously
16 liable for any act or omission by an independent direct support
17 provider or any claim arising out of the employment relationship
18 between a service recipient and an independent direct service
19 provider, nor shall the State be liable as a joint employer.

20 § -11 Rules. The board shall adopt rules in accordance
21 with chapter 91 as necessary to implement this chapter.



1 § -12 **Appeal.** (a) Any person aggrieved by an order or
2 decision of the board issued pursuant to this chapter may appeal
3 the order or decision to the intermediate court of appeals.

4 (b) An order of the board shall not automatically be
5 stayed pending an appeal. A stay shall first be requested from
6 the board. The board may stay the order or any part of it. If
7 the board denies a stay, then a stay may be requested from the
8 intermediate court of appeals. The intermediate court of
9 appeals may stay the order or any part of it and may order
10 additional interim relief.

11 § -13 **Enforcement.** (a) Orders of the board issued
12 under this chapter may be enforced by any party or by the board
13 by filing a petition with a circuit court located in the county
14 in which the action before the board originated. The petition
15 shall be served on the adverse party as provided for service of
16 process under the Hawaii rules of civil procedure. If, after
17 hearing, the court determines that the board had jurisdiction
18 over the matter and that a timely appeal was not filed or that
19 an appeal was timely filed and a stay of the board order or any
20 part of it was not granted or that a board order was affirmed on
21 appeal in pertinent part by the intermediate court of appeals or
22 on review by the supreme court following acceptance of an



1 application for writ of certiorari, the court shall incorporate
2 the order of the board as a judgment of the court. There shall
3 be no appeal from that judgment; provided that a judgment
4 reversing a board decision on jurisdiction may be appealed to
5 the intermediate court of appeals.

6 (b) Upon filing of a petition by a party or the board, the
7 court may grant temporary relief, including a restraining order,
8 as it deems proper pending a formal hearing.

9 (c) Orders and decisions of the board shall apply only to
10 the particular case under appeal, but any number of appeals
11 presenting similar issues may be consolidated for hearing with
12 the consent of the board. The board shall not modify, add to,
13 or detract from a collective bargaining agreement by any order
14 or decision.

15 § -14 Antitrust exemption. The activities of
16 independent direct support providers and their exclusive
17 representative that are necessary for the exercise of their
18 rights under this chapter shall be afforded state action
19 immunity under applicable federal and state antitrust laws. The
20 State intends that the "state action" exemption to federal
21 antitrust laws be available only to the State, to independent
22 direct support providers, and to their exclusive representative



1 in connection with these necessary activities. Exempt
2 activities shall be actively supervised by the State."

3 SECTION 2. This Act shall take effect on July 1, 2050.

4



Report Title:

Collective Bargaining; Independent Direct Support Providers

Description:

Enables independent direct support providers to engage in collective bargaining with the State. Effective 7/1/2050.
(SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

